

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2003-217-S - ORDER NO. 2004-202

AUGUST 23, 2004

IN RE: Application of Midlands Utility, Inc. for)	ORDER
Approval of a Pending Contract with the City)	DISAPPROVING
of Cayce for Bulk Service Collection from the)	CONTRACT
Bellemeade Sewage Collection Facility)	
Located in Lexington County, South Carolina.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) pursuant to S.C. Code Ann. Section 58-5-210(1976) and 26 S.C. Code Regs. 103-503 and 103-541 (Supp. 2003) by way of an Application filed by Midlands Utility, Inc. (Midlands) on July 8, 2003, for approval by this Commission of a contract with the City of Cayce (Cayce) for the bulk service collection of sewage from Midlands Bellemeade Sewage Collection Facility. The primary issue for consideration by this Commission is whether the proposed contract is in the public's best interest.

Midlands was represented by Scott Elliott, Esquire and Charles Cook, Esquire and presented testimony from its President Keith G. Parnell. The Consumer Advocate intervened in this matter and was represented by Elliott F. Elam, Jr., Esquire. The Commission Staff was represented by F. David Butler, General Counsel and presented testimony, under subpoena, of Mr. Jeffrey deBessonnet of the South Carolina Department of Health and Environmental Control (DHEC).

Two public witnesses appeared before the Commission on this matter. Mr. Kevin Green is a resident of the Bellemeade subdivision and voiced his objection to a

substantial increase in the sewage rates he is currently paying. Mr. John Sharpe is the City Manager for the City of Cayce. Mr. Sharpe testified that there is no pending contract between the City of Cayce and Midlands, although they had entered negotiations and provided Midlands with an estimated cost of providing service to Bellemeade. He further testified that Cayce currently had the capacity to handle the subdivision but that City Council would have to reconsider the capacity issue if the Commission approved Midlands connecting with the Cayce.

Findings of Fact

1. Midlands is a closely held South Carolina Corporation which owns and operates wastewater treatment facilities and sewer facilities in Fairfield, Lexington, Orangeburg, and Richland Counties. Midlands serves approximately 145 residents in the Bellemeade subdivision in Lexington County.

2. Midlands is a public utility as defined in S.C. Code Ann. Section 58-5-10(3) and is under the jurisdiction of the Commission pursuant to S.C. Code Ann. Section 58-5-210.

3. The South Carolina Department of Health and Environmental Control (DHEC) has authority over Midlands in that it regulates the wastewater discharges from the Bellemeade sewage collection facility through the issuance to Midlands of National Pollutant Discharge Elimination Systems Permits (“NPDES Permits”) pursuant to the Central Midlands Council of Governments (COG) wastewater treatment management plan (herein the “208 Plan”). The COG is authorized pursuant to Section 1288 of the Federal Water Pollution Control Act (33 U.S.C.A. Sec. 1251; the “Clean Water Act”) to

prepare the 208 Plan which is an area-wide waste treatment management plan. The COG's 208 Plan includes area served by the Midlands' Bellemeade facility.

4. In accordance with the provisions of the 208 Plan, Midlands was ordered by DHEC, under DHEC Order No. 03-044-W, to enter into a contract with the City of Cayce to connect the Bellemeade sewage collection facility to Cayce's wastewater treatment facility. The contract demanded by the DHEC Order, however, is subject to the approval of this Commission.

5. Under the DHEC Order, Midlands negotiated with the City of Cayce. The terms offered by Cayce require the payment of a \$930 tap fee for each of the 145 residents of Bellemeade to be paid to Cayce for a total cost of \$134,850. Midlands would incur additional estimated costs of \$334,850 to connect the Bellemeade subdivision facilities to the City of Cayce. Midlands anticipates obtaining financing on these costs payable over 20 years at a 7% interest rate. In addition to these costs, Cayce's operation and maintenance fee will be set at \$2.31/1000 gallons per month.

6. We find that based on the above stated costs, and Midlands' collection only residential sewer charge established by Commission order No. 2002-138 in Docket No. 2001-380-S, that the estimated average charges for Bellemeade residents would increase from its current \$26.70 to \$58.09 per month. This represents a 117.6% increase in rates.

7. We find that Midlands' estimated cost to upgrade the Bellemeade facility to DEHC standards is approximately \$350,000. When total costs to include Midlands' expenses, interest cost, depreciation, and construction are complete, Midlands estimates

that the monthly sewer charges to their customers in Bellemeade will rise from the current \$26.70 per month to an estimated \$39.51 per month, representing a 48% increase in rates.

8. We further find that DHEC Order 03-044-W provides that should this Commission disapprove the Contract between Midlands and Cayce that Midlands will be required to seek a permit from DHEC to upgrade the Bellemeade sewage collection facility and that Midlands complete construction of the upgrade within two hundred forty (240) days of the denial of this Commission.

9. We find that that the testimony reveals that it is in the best interest of the affected customers, and in agreement with the positions of both the Company and the Consumer Advocate, that the Commission disapprove the contract between Midlands and Cayce for bulk service collection from the Bellemeade sewage collection facility.

10. We finally find that the disapproval of the contract in no way authorizes, entitles, or guarantees Midlands an increase or change in the rates and fees charged its customers in Bellemeade and that the Company must request any such increase in a future proceeding before this Commission.

Conclusions of Law

1. We conclude that Midlands is a public utility as defined by S.C. Code Ann. Section 58-5-10(3) and under the jurisdiction of this Commission pursuant to S.C. Code Ann. Section 58-5-210.

2. We conclude that this matter was referred to this Commission by Order of the South Carolina DHEC (Order No. 03-044-W) based on DHEC's ruling that Midlands

had violated provisions of the Pollution Control Act, S.C. Code Ann. Sections 48-1-10 et seq. (1987 & Supp. 2003).

3. We conclude that under the DHEC Order that Midlands was required to file with this Commission, for its approval, a contract for sewer service with the regional sewer provider, the City of Cayce. Under the aforesaid Order, Midlands filed a letter from the City of Cayce setting forth terms of a proposed contract between Midlands and Cayce dated April 4, 2003.

4. We further conclude that the DHEC Order provides for a contingency in the case of this Commission disapproving the submitted contract with the City of Cayce. This contingency requires Midlands to submit to DHEC, within sixty days of the issuance of this Order, plans, specifications and an application for a permit to construct upgrades to the Bellemeade wastewater treatment facility to meet permitted discharge limits.

5. We conclude that based on the provisions of the DHEC Order and the evidence and testimony presented before this Commission in this matter that it is in the best interests of Midlands' Bellemeade customers, and therefore in the public interest, for this Commission to disapprove the proposed Contract and for Midlands to petition DHEC for the appropriate authority and permits to upgrade the Bellemeade sewage collection facility. Based on the testimony and evidence presented to this Commission, that course of action is the most cost effective method of providing the Bellemeade residents with continued sewer service.

IT IS THEEFORE ORDERED, ADJUDGED, AND DECREED:

1. That the contract between Midlands and the City of Cayce is disapproved.

2. That Midlands comply with the terms, conditions, and timelines provided in DHEC Order No. 03-44-W to submit any requisite applications, requests, plans and specifications to DHEC for construction upgrades to the Bellemeade wastewater treatment facility to meet permitted discharge limits.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)